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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,913	11/26/2003	Robert R. Turvey	J-3672A	9795

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EXAMINER

RAMIREZ, RAMON O

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/723,913	Applicant(s) TURVEY, ROBERT R.	
	Examiner RAMON O. RAMIREZ	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,8-11 and 13-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,16,29 and 30 is/are allowed.
- 6) ☒ Claim(s) 1,4-6,8-11,13,14,17-28,31 and 35 is/are rejected.
- 7) ☒ Claim(s) 32-34 and 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/26,9/20,11/26 04</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

This is the second Office Action corresponding to amendment filed Nov 26, 2004. The application contains 32 claims. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Information Disclosure Statement

Tupperware reference cited on IDS filed Jul 12, 2004 is acknowledged, other references cited were already acknowledged before. IDS filed Aug 26, 2004 has been considered. IDS filed Sep 20, 2004 has been considered. IDS filed Nov 26, 2004 have been considered but for the two foreign references which could not be opened. The problem has been reported. Rather than wait for the correction of this problem, the examiner decided to continue with the prosecution of the application. These references would be considered on a later date.

Claim Rejections - 35 USC § 102

Claims 1, 4, 5, 6, 8, 31 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Jasmagy, Jr. (Pat No 4,844,400).

The patent to Jasmagy, Jr. discloses a suspension device comprising a hanging member (24), a backing member (18) and a suspension member (16) for receiving a container in a vertical position. The suspension member is defined by a wall

member (12) wherein one side of the wall resists movement of the container from one direction, and the other side of the wall resists movement of the container from a second position. As to the method claims, the suspension device shown by Jasmagy, Jr. can be used following the recited method steps.

Claim Rejections - 35 USC § 103

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jasmagy, Jr.

To make the different elements of Jasmagy, Jr. integral is considered to be an obvious matter of engineering choice since it has been held to be within the general skill of a worker in the art to make plural parts unitary and viceversa as a matter of obvious engineering choice. As to the specific shape of the suspension member, the same is also considered to be a matter of engineering choice to receive containers of different shapes; for example, a square shape for a square container, etc.

Claims 13, 14, 17-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jasmagy, Jr. in view of Goldman (Pat No 5,833,056).

The patent to Jasmagy, Jr. supports containers but does not describe them.

The patent to Goldman shows a container (60) comprising a lid (62) with a tab.

It would have been obvious to one skilled in the art at the time the invention was made to have used a container as the one shown by Goldman with Jasmagy device as one of many containers capable of being used. As recited above, it has been held to be within the

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general skill of a worker in the art to make plural parts unitary and viceversa as a matter of obvious engineering choice.

Allowable Subject Matter

Claims 15, 16, 29 and 30 are allowed.

Claims 32-34 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. The prior art is being capable of being used as recited by the rejected claims. A container is capable of being inserted on a non-horizontal position, and the interference fit depends from the size of the container.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (703) 308-0748. The examiner can normally be reached on MONDAY-FRIDAY, IST
FRIDAY OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LESLIE BRAUN can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


RAMON O. RAMIREZ
Primary Examiner
Art Unit 3632

ROR
December 20, 2004